

RECORDING REQUESTED BY:  
Robson Homes, LLC  
2185 The Alameda, Suite 150  
San Jose, California 95126



Fees.... 79.00  
Taxes....  
Copies...  
AMT PAID 79.00

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
700 Heinz Avenue  
Berkeley, California 94710  
Attention: Barbara J. Cook, Chief

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
First American Title Company

RDE # 003  
4/24/2007  
1:59 PM

319749sjh

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## COVENANT TO RESTRICT USE OF PROPERTY

### ENVIRONMENTAL RESTRICTION

(Re: Lots 1-12, 37-45, A-1, and A-2 of Tract 9749 as recorded on January 27, 2006 in Book 796 of Maps, Pages 45-48 Santa Clara County records. File No. 18786740).

This Covenant and Agreement supersedes and replaces in its entirety the Covenant and Agreement recorded on 18 October, 2006, as document No. 19147017 of Official Records.

This Covenant and Agreement ("Covenant") is made by and between Robson Homes, LLC (the "Covenantor"), the current owner of property situated in San Jose, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I  
STATEMENT OF FACTS

1.01. The Property, totaling approximately 7.6 acres, is more particularly described and depicted in **Exhibit "A"**, attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by the Southern Pacific Railroad on the north and east, and Campbell Avenue on the south and west, County of Santa Clara, State of California. This property is more specifically described as Santa Clara County Assessor's Parcel No. (APN) 230-14-07.

1.02. A limited portion of the Property (Lots 1 through 12, Lot A-2, Las Casitas Court, and Lots 37 through 45 of Tract 9749) is more particularly described in **Exhibit "B"** which is attached and incorporated by this reference (Restricted Areas 1 and 2). A plat and metes and bounds legal description of Las Casitas Court is included as **Exhibit "C."** Both restricted areas are within Tract 9749. Restricted Area 1 refers to Lots 1 through 12 and Lot A-2 at a depth of 10 feet or more below ground surface (bgs). Restricted Area 2 refers to Lots 37 through 45 and Las Casitas Court at a depth of 15 feet or more bgs.

1.03. The Property has been remediated pursuant to a Removal Action Workplan pursuant to Chapter 6.8 of Division 20 of the H&SC, under the oversight of the Department. The Removal Action Plan provides that a deed restriction be required as part of the site remediation, because polychlorinated biphenyls (PCBs), which are hazardous substances, as defined in H&SC section 25316, and a hazardous material as defined in H&SC section 25260 remain at depths of 10 feet or more below the surface of the Property. The Department circulated the Removal Action Workplan, which contains a discussion of a human health risk assessment, together with a draft California Environmental Quality Act (CEQA) Notice of Exemption (NOE) pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Removal Action Workplan and the NOE were approved by the Department on July 29, 2005, pursuant to which the Property was excavated to a depth of 10 feet or more, graded, then backfilled with clean soil. PCBs above unrestricted standards are regulated by the

United States Environmental Protection Agency pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. Section 2601 et seq..

1.04 As described in the Human Health Screening Evaluation in the Removal Action Workplan, as approved by the Department on July 29, 2005, portions of the subsurface within Restricted Areas 1 and 2, at a depth of 10 feet bgs or greater, contain a hazardous substance, as defined in H&SC section 25316, polychlorinated biphenyls (PCBs) ranging from 0.077 mg/kg to 1,300 mg/kg. The evaluation indicates that under a residential land-use scenario, residents (including children and adults) are primarily exposed to contaminants within the top few inches of soil down to two feet bgs. Because residual PCBs are located at a depth of 10 feet bgs or greater, the Department concluded that the Property as a whole, and Restricted Areas 1 and 2, as remediated and subject to the restrictions of this Covenant, do not present an unacceptable threat to human safety or the environment for a residential land use scenario.

## ARTICLE II

### DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III  
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which Restricted Areas 1 and 2 shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of Restricted Areas 1 and 2, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of Restricted Areas 1 and 2, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of Restricted Areas 1 and 2.

3.05. Conveyance of Property. The Owner shall provide notice to the Department and the United States Environmental Protection Agency not later than thirty (30) days after any conveyance of any ownership interest in Restricted Areas 1 and 2 (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by

reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering this Covenant to be paid by Owner. The Department has incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Covenantor hereby covenants for itself and for all subsequent owners that pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner shall pay the Department's cost in administering the Covenant.

## ARTICLE IV RESTRICTIONS

### 4.01. Soil Management

- (a) No activities that will disturb the soil within Restricted Areas 1 and 2 at or below 10 and 15 feet below grade, respectively (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed in Restricted Areas 1 and 2 without a Soil Management Plan and a Health and Safety Plan approved by the Department and without notification of the United States Environmental Protection Agency (U.S. EPA).
- (b) Any contaminated soils (at or below 10 and 15 feet below grade from Restricted Areas 1 and 2, respectively) brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department and U.S. EPA written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in Restricted Areas 1 and 2, at or below 10 and 15 feet below grade, respectively.

4.02. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with

the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

## ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean roads, driveways, and paved parking areas); constructed or placed upon any portion of Restricted Areas 1 and 2 in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

## ARTICLE VI ANNUAL COMPLIANCE NOTICE

6.01. Annual Compliance Letter. The Encanto Home Owner's Association (Encanto HOA) or its successor will own and control the streets at the Property. On an annual basis, the Encanto HOA or its successor shall send the Department a letter reporting on it's compliance with the Restrictions set forth in Article IV of this Covenant for activities in the streets in Restricted Areas 1 and 2. **Exhibit "D"** is a map of the streets in Restricted Areas 1 and 2. No report shall be required for areas of the Property not in the streets.

6.02. Form of Annual Compliance Letter. The annual compliance letter shall be in a form substantially similar to the draft letter attached to this Covenant as **Exhibit "E"**. The Encanto HOA or its successor shall send the Department the annual compliance letter by March 1<sup>st</sup> of each year and report on activities during the prior calendar year. The annual compliance letter shall be sent to the Department at the address listed in Article 8.04.

ARTICLE VII  
VARIANCE, TERMINATION, AND TERM

7.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

7.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of Restricted Areas 1 and 2. Such application shall be made in accordance with H&SC section 25234.

7.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VIII  
MISCELLANEOUS

8.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

8.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

8.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully executed original.

8.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Robson Homes, LLC  
2185 The Alameda, Suite 150  
San Jose, California 95126  
Attention: Mark Robson

To Department:

Department of Toxic Substances Control  
Northern California –  
Coastal Cleanup Operations Branch  
700 Heinz Avenue  
Berkeley, California 94710  
Attn: Barbara J. Cook, P.E., Chief

To the United States Environmental Protection Agency:

Toxics Office  
USEPA REGION 9  
75 Hawthorne Street  
**Mail Code:** CED-4  
San Francisco, CA 94105

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.



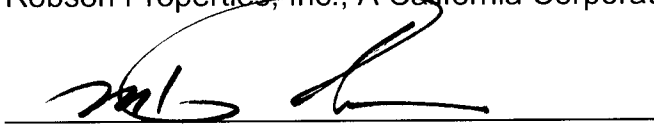
8.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Robson Homes, LLC, A California Limited Liability Company

By: Robson Properties, Inc., A California Corporation Its Managing Member

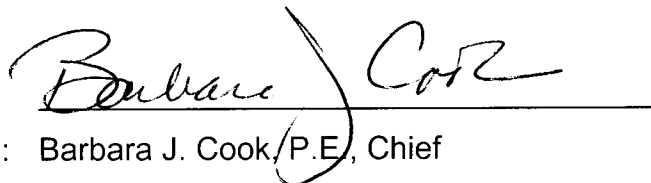


Name/Title: Mark Robson, President

Date: 4/18/2007

Department of Toxic Substances Control

By:



Name/Title: Barbara J. Cook, P.E., Chief

Northern California – Coastal Cleanup Operations Branch

Date: 4/23/2007

STATE OF CALIFORNIA )  
 )  
COUNTY OF Santa Clara )

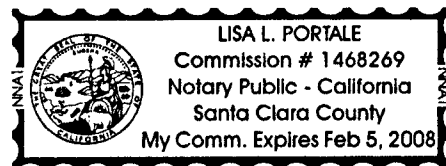
On this 18<sup>th</sup> day of April, in the year 2007,

before me Lisa L. Portale, Notary Public, personally appeared

Mark Robson

personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Signature Lise Robson

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

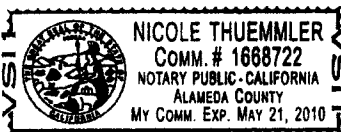
State of California

County of Alameda

On April 23, 2007 before me, Nicole Thuemmler, Notary Public  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Barbara J. Cook  
Name(s) of Signer(s)

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nicole Thuemmler  
Signature of Notary Public

## -----OPTIONAL-----

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer
- ☐ Titles(s): \_\_\_\_\_
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): \_\_\_\_\_
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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# EXHIBIT A

## Property Map

**TRACT 9748**  
**CAMPBELL AVENUE**

BEING A SUBDIVISION OF ALL OF THE REAL PROPERTY DESCRIBED IN DOCUMENT NO  
12863880, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND LYING WITHIN THE CITY OF  
SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

LANDS OF PENINSULA CORRIDOR JOINT POWERS  
BOARD

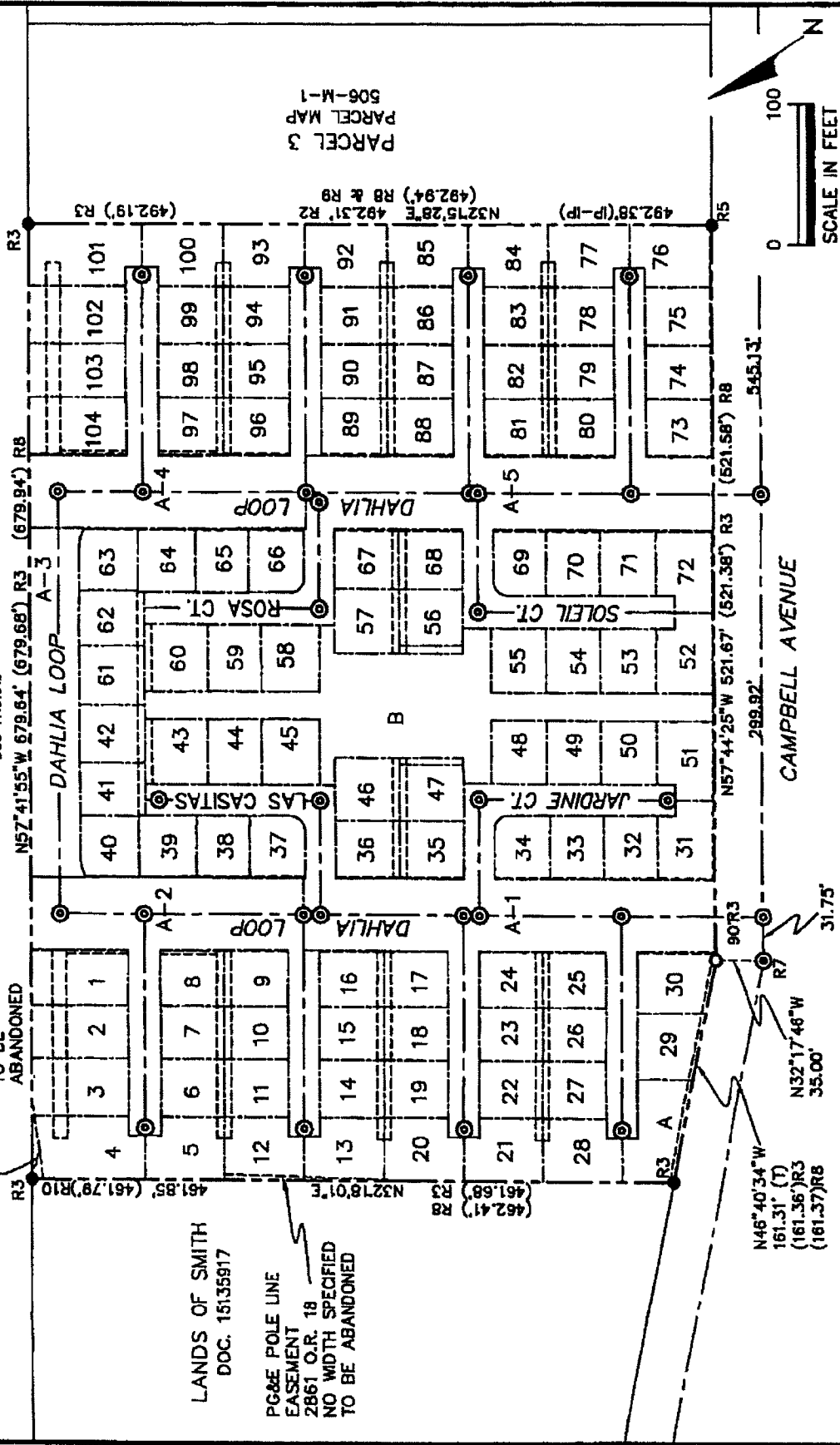
DOC 11181648

P.I.E.E.  
1368 O.R. 350  
TO BE  
ABANDONED

LANDS OF SMITH  
DOC. 15135917

PG&E POLE LINE  
EASEMENT  
2861 O.R. 18  
NO WIDTH SPECIFIED  
TO BE ABANDONED

PARCEL MAP  
506-M-1



# EXHIBIT B

## Restricted Areas 1 and 2

**TRACT 9749**

**CAMPBELL AVENUE**

BEING A SUBDIVISION OF ALL OF THE REAL PROPERTY DESCRIBED IN DOCUMENT NO. 12892030, OFFICIAL RECORDS, OF SANTA CLARA COUNTY, AND LYING WITHIN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

LANDS OF PENINSULA CORRIDOR JOINT POWERS BOARD

DOC 11181646

P.I.E.E.  
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RESTRICTED AREA 1



RESTRICTED AREA 2

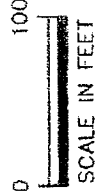
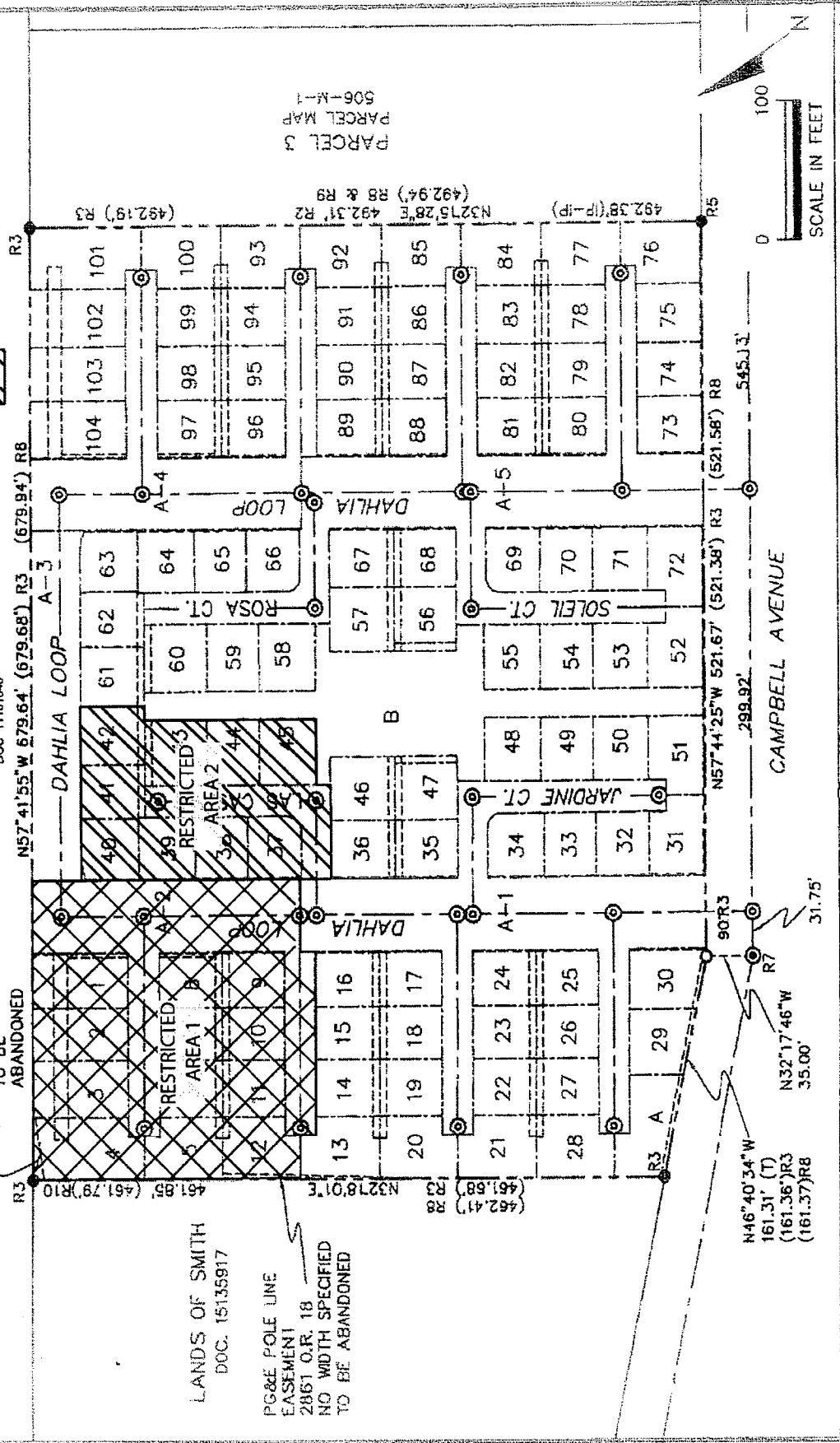


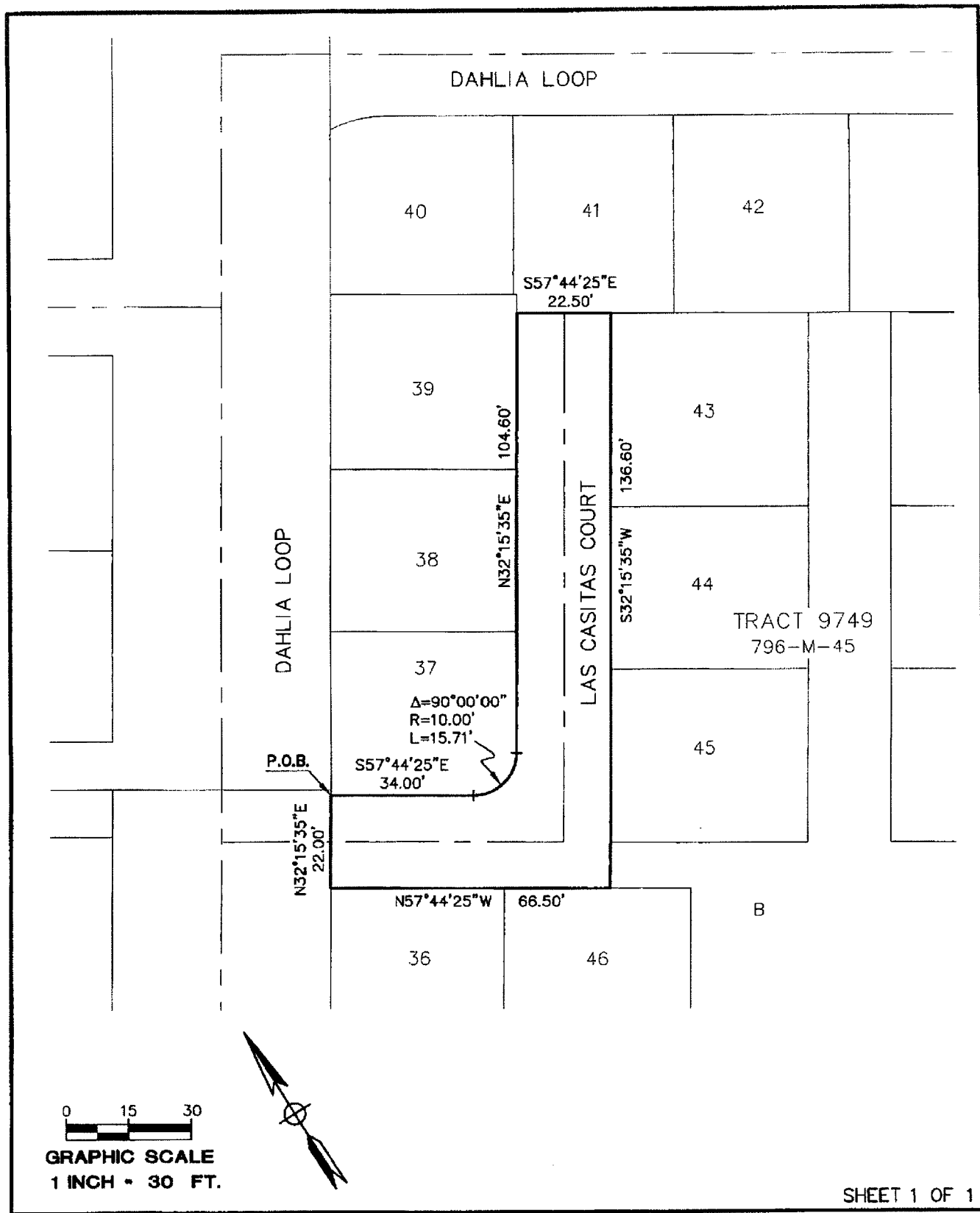
EXHIBIT B

# EXHIBIT C

## Plat and Legal Description of Las Casitas Court

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Date: 02-05-07	San Jose
Scale: 1" = 30'	(408) 487-2200
Designed: —	
Drawn: TG	Gilroy
Checked: SD	(408) 848-0707
Proj. Eng: —	
Proj. Name: 3383PL03	www.hmh-engineers.com

**HMH**  
ENGINEERS

Plat to accompany description:  
LAS CASITAS COURT  
TRACT 9749

SAN JOSE

CALIFORNIA

EXHIBIT C

February 5, 2007  
HMH 3383-01-270  
Page 1 of 1**EXHIBIT "C"**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Las Casitas Court as shown on that map of Tract 9749 filed for record on January 27, 2006, in Book 796 of Maps, pages 45 through 48, Santa Clara County Records, more particularly described as follows:

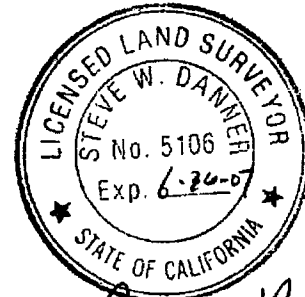
BEGINNING at the westerly corner of Lot 37 as shown on said map of Tract 9749, being on the northeasterly line of Las Casitas Court;

Thence along the northeasterly, northwesterly, southeasterly and southwesterly lines of Las Casitas Court, the following six courses:

1. Thence South 57°44'25" East, 34.00 feet;
2. Thence along a tangent curve to the left, having a radius of 10.00 feet, through a central angle of 90°00'00" for an arc length of 15.71 feet;
3. Thence North 32°15'35" East, 104.60 feet;
4. Thence South 57°44'25" East, 22.50 feet;
5. Thence South 32°15'35" West, 136.60 feet;
6. Thence North 57°44'25" West, 66.50 feet, to the southeasterly line of Dahlia Loop;

Thence along the northeasterly prolongation of said southeasterly line, North 32°15'35" East, 22.00 feet, to the POINT OF BEGINNING.

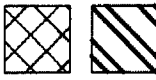
Containing 0.093 acres, more or less.



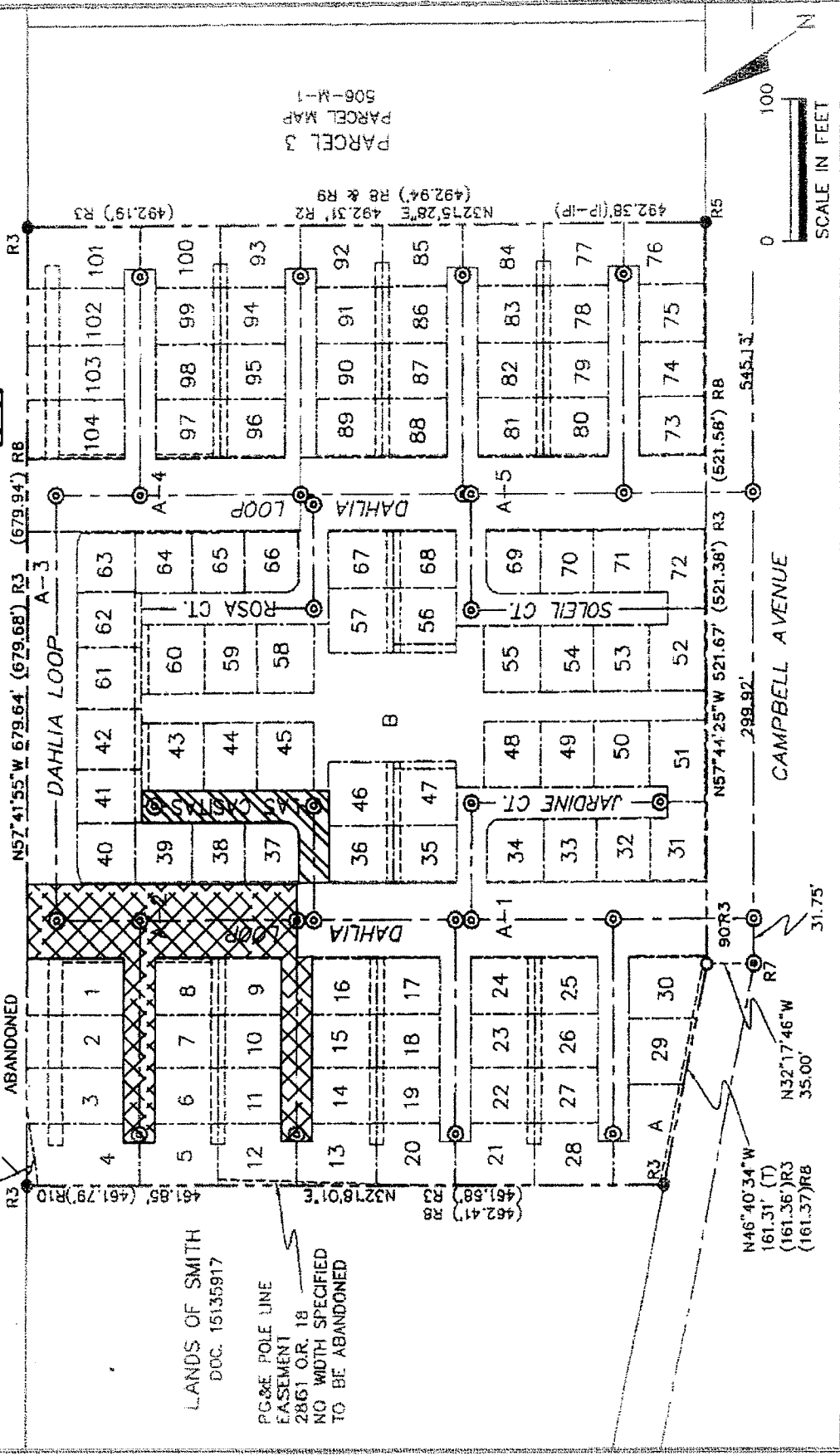
# EXHIBIT D

## Streets in Restricted Areas 1 and 2

STREETS IN RESTRICTED AREA 1  
STREET IN RESTRICTED AREA 2



TRACT 9749  
CAMPBELL AVENUE  
BEING A SUBDIVISION OF ALL OF THE REAL PROPERTY DESCRIBED IN DOCUMENT NO. 1280000, OFFICIAL RECORDS OF SANTA CLARA COUNTY, AND LYING WITHIN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.  
LANDS OF PENINSULA CORRIDOR JOINT POWERS BOARD  
DOC 11181648  
P.I.E. 1368 O.R. 350 TO BE ABANDONED



## EXHIBIT E

## Form of Annual HOA Compliance Letter

Date: MARCH 1, [year]\_\_\_\_\_

Barbara J. Cook, P.E., Chief  
Department of Toxic Substances Control  
Northern California Region  
Northern California Coastal Cleanup Operations Branch  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

**Subject: Encanto HOA Annual Compliance Letter  
Environmental Restriction for Campbell Avenue Property, San Jose, California.**

Dear Ms. Cook:

The purpose of this letter is to provide the Department of Toxic Substances Control (DTSC) with an annual compliance letter, as required by the Covenant to Restrict Use of Property Environmental Restriction (Environmental Restriction) dated [ADD DATE] recorded for the Encanto subdivision on Campbell Avenue in San Jose, California (the Property). A copy of the Environmental Restriction with a map of the Property is attached at **Tab 1**.

The Encanto Homeowners Association (HOA) owns the streets at the Property. The Environmental Restriction requires the HOA to report annually on compliance with environmental restrictions for work done in the streets in **Restricted Areas 1 and 2** at the Property. **Tab 2** (Exhibit "D" to the Environmental Restriction) is a map showing the streets in **Restricted Areas 1 and 2**.

The following is a list of activities set out in Article IV of the Environmental Restriction. For the year \_\_\_\_\_, commencing in \_\_\_\_\_ and ending in \_\_\_\_\_, the following occurred on the streets at the Property. **[Check all that apply for the reported year. Use the left column if NO WORK was done in the streets in the restricted areas. Use the right column if work was done in the streets in the restricted areas.]**

## STREETS IN RESTRICTED AREA 1

No Work Done in Streets at Area 1	Work Done in Streets at Area 1
<p>The HOA did <b>not</b> perform any of the following activities at a depth of 10 feet or more below ground surface:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Excavation</li> <li><input type="checkbox"/> Grading</li> <li><input type="checkbox"/> Soil Removal</li> <li><input type="checkbox"/> Trenching</li> <li><input type="checkbox"/> Filling/ Backfilling</li> <li><input type="checkbox"/> Earth Movement</li> <li><input type="checkbox"/> Mining</li> </ul>	<p>The HOA performed the following activities at a depth of 10 feet or more below ground surface:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Excavation</li> <li><input type="checkbox"/> Grading</li> <li><input type="checkbox"/> Soil Removal</li> <li><input type="checkbox"/> Trenching</li> <li><input type="checkbox"/> Filling</li> <li><input type="checkbox"/> Earth Movement</li> <li><input type="checkbox"/> Mining</li> </ul> <p>In accordance with the Environmental Restriction, the above activities were done after the HOA did <b><u>all</u></b> of the following:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Implemented a DTSC-approved Soil Management Plan</li> <li><input type="checkbox"/> Implemented a DTSC-approved Health and Safety Plan</li> <li><input type="checkbox"/> Provided notice to the U.S. EPA and DTSC at least 14 days before commencement of any of the above activities.</li> <li><input type="checkbox"/> Any contaminated soil brought to the surface from a depth of 10 feet or more below ground surface was managed in accordance with state and federal law.</li> </ul>

## STREETS IN RESTRICTED AREA 2

No Work Done in Streets at Area 2	Work Done in Streets at Area 2
<p>The HOA did <b>not</b> perform the following activities at a depth of 15 feet or more below ground surface:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Excavation</li> <li><input type="checkbox"/> Grading</li> <li><input type="checkbox"/> Soil Removal</li> <li><input type="checkbox"/> Trenching</li> <li><input type="checkbox"/> Filling/ Backfilling</li> <li><input type="checkbox"/> Earth Movement</li> <li><input type="checkbox"/> Mining</li> </ul>	<p>The HOA performed the following activities at a depth of 15 feet or more below ground surface:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Excavation</li> <li><input type="checkbox"/> Grading</li> <li><input type="checkbox"/> Soil Removal</li> <li><input type="checkbox"/> Trenching</li> <li><input type="checkbox"/> Filling</li> <li><input type="checkbox"/> Earth Movement</li> <li><input type="checkbox"/> Mining</li> </ul> <p>In accordance with the Environmental Restriction, the above activities were done after the HOA did <b><u>all</u></b> of the following:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Implemented a DTSC-approved Soil Management Plan</li> <li><input type="checkbox"/> Implemented a DTSC-approved Health and Safety Plan</li> <li><input type="checkbox"/> Provided notice to the U.S. EPA and DTSC at least 14 days before the commencement of any of the above activities.</li> <li><input type="checkbox"/> Any contaminated soil brought to the surface from a depth of 15 feet or more below ground surface was managed in accordance with state and federal law.</li> </ul>

The above information constitutes the HOA's annual compliance letter to DTSC, as required by the Environmental Restriction.

Sincerely,

Name

Title

Contact Telephone Number



